

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

John Clark Bridges,

Petitioner,

vs.

Director of Corrections,

Respondent.

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**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Case No. 1:23-cv-035

The Petitioner, John Clark Bridges, initiated this *pro se* action on March 15, 2023. See Doc. No. 3. The Petitioner filed a Motion for Writ of Habeas Corpus under 28 U.S.C. § 2254 (Doc. No. 3) and a Motion for Leave to Proceed in Forma Pauperis (Doc. No. 2) on March 15, 2023. Magistrate Judge Clare R. Hochhalter issued a Report and Recommendation on March 17, 2023, in which he recommended the Court deny the motion to proceed in forma pauperis and dismiss the Section 2254 petition without prejudice for lack of jurisdiction. See Doc. No. 7. The Petitioner was given until April 7, 2023, to file an objection to the Report and Recommendation. On April 4, 2023, the Petitioner filed an objection. See Doc. No. 8.

The Court has carefully reviewed the Report and Recommendation, the relevant case law, the Plaintiff's objection, and the entire record, and finds the Report and Recommendation to be persuasive. The Court finds the Plaintiff's objection unpersuasive. The Court agrees with Magistrate Judge Hochhalter's determination that the Court lacks jurisdiction. The Petitioner's current Section 2254 petition is his second or successive petition because his prior petition was dismissed as untimely. Therefore, the Petitioner must obtain circuit court permission before the Court can entertain a petition. Consequently, the current Section 2254 petition must be dismissed for lack of jurisdiction.

The Court **ADOPTS** the Report and Recommendation (Doc. No. 7) in its entirety and **ORDERS** as follows:

- 1) The Petitioner's motion for leave to proceed in forma pauperis (Doc. No. 2) is **DENIED**.
- 2) The Petitioner's Section 2254 petition (Doc. No. 3) is **DISMISSED** without prejudice on the grounds of lack of jurisdiction.
- 3) The Court finds that any appeal would be frivolous, could not be taken in good faith, and may not be taken in forma pauperis.
- 4) Based upon the entire record before the Court, dismissal of the motion is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings. Therefore, a certificate of appealability will not be issued by this Court. See Tiedemann v. Benson, 122 F.3d 518, 252 (8th Cir. 1997) (finding that a district court possesses the authority to issue certificates of appealability under Section 2253(c)). If the petitioner desires further review of his petition, he may request the issuance of a certificate of appealability by a circuit judge of the Eighth Circuit Court of Appeals in accordance with *Tiedemna v. Benson*, 122 F.3d 518, 250-252 (8th Cir. 1997).

IT IS SO ORDERED.

Dated this 12th day of April, 2023.

/s/ Daniel L. Hovland
Daniel L. Hovland, District Judge
United States District Court